

**ZONING ORDINANCE
FOR
MOULTONBOROUGH, NEW HAMPSHIRE**

October 15, 1985

Revisions

March 8, 1988

March 10, 1992

March 9, 1993

March 8, 1994

March 14, 1995

March 13, 1996

March 11, 1998

March 9, 1999

March 14, 2000

March 13, 2001

March 12, 2002

March 11, 2003

March 14, 2006

March 13, 2007

March 11, 2008

March 10, 2009

March 9, 2010

ZONING ORDINANCE TOWN OF MOULTONBOROUGH, NEW HAMPSHIRE

ARTICLE I

Statement of Purpose and Authority

The Zoning Ordinance of the Town of Moultonborough is intended to regulate land use Within the Town of Moultonborough. The ordinance is designed to take into account the impacts of land uses and to impose limitations on uses of land for the protection of the environment, the natural resources and the rural qualities of Moultonborough. The ordinance is further intended to promote health, safety, economic and social well-being, convenience, prosperity, and general welfare; it is intended to lessen congestion in the streets, to secure safety from fires and other dangers, to provide adequate light and air, to prevent overcrowding of land, and to avoid undue concentration of population and to facilitate the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks and to encourage proper use of natural resources. The ordinance is also intended to minimize the impact of potentially incompatible uses with particular consideration given to the character of the area as well as an effort to conserve the value of buildings, to promote good civic design and the wise and efficient expenditure of public funds. Pursuant to the authority granted by chapter 674 of the revised statutes annotated, sections 17 et. Sec. and chapters 672-677 generally, this ordinance is enacted by the voters of the Town of Moultonborough.

ARTICLE II

Title

This ordinance shall be known and may be cited as the Zoning Ordinance of the Town of Moultonborough.

ARTICLE III

General Provisions

All land in the Town of Moultonborough shall be subject to the limitation set forth herein. Single family residential, (two-family residential with subdivision approval as per the requirements of Table I) and agricultural uses are allowed throughout the Town of Moultonborough. Accessory uses which are incidental to and subordinate to the principal use of the property are allowed. Farm stands are an accessory use. All uses other than one and two family residential or agricultural will need to follow the requirements of commercial uses.

- A. Minimum lot sizes. The table below sets forth the minimum lot area upon which a dwelling, structure, building, mobile home, camper, R.V. or house trailer may be

constructed, or located, or used according to the soil and slope conditions, where the septic system is to be located on that lot. Larger lot sizes may be required in accord with the characteristics of each lot. Square footage is set forth as the minimum per dwelling unit required, and no less than 40,000 square feet shall be permitted for each lot, whether or not the lot contains a septic system.

The Town is divided into residential/agricultural zone and two commercial zones, as defined in Article VI. Commercial uses are permitted in the commercial zones, and allowed by special exception throughout the Town.

Table I
Minimum Lot Sizes Based On Soil And Slopes
(In Square Feet)

Carroll County
Soil Survey Field Sheets

Symbol	Soil Type	A 0-3% B 3-8%	C 8-15%	D 15-25%
Ac	Acton fsl	50,000	75,000	----
Ad	Acton vsfsl	50,000	75, 000	----
Am	Adams ls	40,000	45,000	60,000
Aw	Alluvial land, wet	NP	NP	NP
Bc	Becket vsfsl	50,000	75,000	100,000
Be	Becket vsfsl assoc.	50,000	75,000	100,000
Bs	Berkshire vsfsl	40,000	45,000	60,000
Bt	Berkshire vsfsl	40,000	45, 000	60,000
Bv	Berkshire vsfsl assoc.	40,000	45,000	60,000
Cd	Canaan-Redstone sl	60,000	80,000	120,000
Cd	Canaan-Redstone vrgfsl	80,000	100,000	160,000
Ce	Canaan-Redstone xrsfsl	80,000	100,000	160,000
Cf	Charlton fsl	40,000	45,000	60,000
C1	Charlton vsfsl	40,000	45, 000	60,000
Cm	Chocorua mucky peat	NP	NP	NP
Cn	Colton glfs	40,000	45,000	60,000
Cy	Croghan lfs	60,000	----	----
De	Deerfield lfs	60,000	----	----
Dn	Duane fsl	60,000	----	----
Fa	Fresh water marsh	NP	NP	NP
G1	Gloucester fsl	40,000	45,000	60,000
Gs	Gloucester vsfsl	40,000	45,000	60, 000
Gt	Gloucester xsfsl	40,000	45,000	60,000
Gw	Greenwood mucky peat	NP	NP	NP

Ha	Hadley vfsl	NP	NP	NP
Hf	Herman fsl	40,000	45,000	60,000
Hm	Herman vsfsl	40,000	45,000	60,000
Hn	Herman xsfsl	40,000	45,000	60,000
Hs	Hinckley gls	40,000	45,000	60,000
Ht	Hollis-Charlton fsl	60,000	80,000	100,000
Hv	Hollis-Charlton vrfsl	80,000	100,000	160,000
Hx	Hollis-Charlton xrl	80,000	100,000	160,000
Ld	Leicester-Ridgebury	NP	NP	NP
Lf	Leicester-Walpole vsfsl	NP	NP	NP
Lk	Limerick silt-loam	NP	NP	NP
Lm	Limerick vfsl	NP	NP	NP
Ln	Lyman-Berkshire vrfsl	60,000	80,000	120,000
Ls	Lyman-Berkshire ro complex	80,000	100,000	160,000
Ma	Marlow fsl	50,000	75,000	100,000
Md	Marlow vsfsl	50,000	75,000	100,000
Mf	Marlow-Peru vsfsl	50,000	75,000	100,000
Mi	Millis fsl	60,000	90,000	120,000
Ms	Millis vsfl	60,000	90,000	120,000
Mu	Muck and peat	NP	NP	NP
NA	Naumberg ls	NP	NP	NP
Nc	Nicholville silt 1 variant	60,000	----	----
Of	Ondawa fsl	NP	NP	NP
Oh	Ondawa fsl, high bottom	NP	NP	NP
Os	Ondawa vfsl variant	NP	NP	NP
Ot	Ossipee mucky peat	NP	NP	NP
Pa	Paxton fsl	50,000	75,000	100,000
Pd	Paxton vsfsl	50,000	75,000	100,000
Pe	Peru vsfl	60,000	90,000	120,000
PL	Peru vsfsl assoc.	60,000	90,000	120,000
Po	Podunk fsl	NP	NP	NP
Ps	Podunk fsl variant	NP	NP	NP
Ra	Raynham silt loam variant	NP	NP	NP
Rg	Ridgebury fsl	NP	NP	NP
Rl	Ridgebury vsfsl	NP	NP	NP
Ro	Rock outcrop	NP	NP	NP
Sa	Salmon vfsl variant	40,000	45,000	60,000
Sd	Scituate fsl	60,000	90,000	120,000
Sd	Scituate vsfsl	60,000	90,000	120,000
Se	Skerry vsfsl	60,000	90,000	120,000
Sf	Suncook lfs	NP	NP	NP
Sn	Sutton fsl	50,000	75,000	----
Su	Sutton vsfsl	50,000	75,000	----
Wa	Waumbek vsfsl	50,000	75,000	----
Wb	Waumbek-Skerry vsfsl assoc.	50,000	75,000	----

Wc	Whitman vsl	NP	NP	NP
Wd	Windsor ls	40,000	45,000	60,000
Wn	Winooski vfsl	NP	NP	NP
Wo	Woodbridge fsl	60,000	90,000	120,000
Wv	Woodbridge vsfl	60,000	90,000	120,000

Septic systems not permitted on slopes of 25% - cannot be included in minimum lot size determination.

NP - Septic systems not permitted on these soils- cannot be included in minimum lot size determination.

Soil types do not normally occur with these slopes. On-site determination required.

fsl - fine sandy loam	vr - very rocky
glfs - gravelly loamy fine sand	vrfsf - very rocky fine sandy loam
gls - gravelly loamy sand	vrgfsf - very rocky gravelly fine sandy loam
l - loam	vs - very stony
lfs - loamy fine sand	vsl - very sandy loam
ls - loamy sand	vsfsf - very stony fine sandy loam
sl - sandy loam	xs - extremely stony
vfsl - very fine sandy loam	

B. Minimum setbacks. No residential or agricultural buildings, mobile home, camper, R.V., house trailer, or other residential or agricultural structure, or any part or portion thereof shall be placed, located, or constructed in violation of the following provisions:

- (1) Fifty feet from the centerline of the improved surface of any roadway used or intended for public travel and not less than twenty-five (25) feet from the edge of the right of way.
- (2) For roads with a right of way in excess of fifty (50) feet, the setback from the centerline of the improved surface of the roadway shall be one-half the width of the right of way plus twenty-five (25) feet, and not less than twenty-five (25) feet from the edge of the right of way.
- (3) Twenty (20) feet from any lot line.
- (4) Fifty (50) feet from the high water line of any lake, pond, river, or stream.
- (5) No dock may be located nearer than twenty (20) feet from a lot line.
- (6) Structures to include stairs and raised walkways to a waterbody as defined by the State of NH, used for access and egress within setbacks are permitted only by Special Exception.

C. Any use that may be obnoxious or injurious by reason of causing odors, dust, smoke, refuse matter, fumes, noise, vibration, or similar conditions, or that is dangerous to the health or safety, comfort, peace and enjoyment of the community as determined by the selectmen and the Planning Board is prohibited.

D. No persons shall maintain or keep any hazardous or toxic materials, a dump or a junk yard so near to any street, highway, or other public place or adjoining property so as to be offensive to the public or to the adjoining property. For the purpose of this section of this ordinance, junk yard shall include, shall be defined in accordance with RSA 236:112 I, III, IV; 236:112

Definitions – For the purposes of this subdivision:

I. "Junk yard" means a place used for storing and keeping, or storing and selling, trading, or otherwise transferring old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked motor vehicles, or parts thereof, iron, steel, or other old or scrap ferrous or nonferrous material. As used in this subdivision, the term includes, but is not limited to, the following types of junk yards:

(a) Automotive recycling yards, meaning a motor vehicle junk yard, as identified in subparagraph (c), the primary purpose of which is to salvage multiple motor vehicle parts and materials for recycling or reuse;

(b) Machinery junk yards, as defined in paragraph III; and

(c) Motor vehicle junk yards, meaning any place, not including the principal place of business of any motor vehicle dealer registered with the director of motor vehicles under RSA 261:104 and controlled under RSA 236:126, where the following are stored or deposited in a quantity equal in bulk to 2 or more motor vehicles:

(1) Motor vehicles which are no longer intended or in condition for legal use according to their original purpose including motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap; and/or

(2) Used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or secondhand material which has been a part, or intended to be a part, of any motor vehicle.

III. "Machinery junk yard" means any yard or field used as a place of storage in which there is displayed to the public view, junk machinery or scrap metal that occupies an area of 500 square feet.

IV. "Motor vehicle" means "motor vehicle" as defined by RSA 259:60, I, namely, any self-propelled vehicle not operated exclusively upon stationary tracks, including ski area vehicles.

E. Off-street loading and parking. Adequate off-street loading and parking areas shall be provided when any new use is established or any existing use is enlarged in accord with the following specifications:

(1) All proposed new residential developments shall provide for adequate off-street parking spaces in accord with this ordinance.

(2) A single parking space is defined as being 200 square feet in area reserved exclusively for use as a parking space. Parking for multiple cars shall allow adequate area for entrance and egress.

For residential use, a minimum of two (2) parking spaces shall be required for each dwelling unit.

F. (1) Not more than one (1) structure, mobile home, camper or R.V. unit suitable for use or occupancy as a dwelling unit is allowed per lot unless subdivision approval shall be obtained from the Moultonborough Planning Board. An accessory structure may be permitted upon the premises so long as it is not adapted for use or occupancy as a dwelling or for any use inconsistent with that of the principal building upon the premises.

(2) Not more than one (1) Recreational Vehicle (RV) such as motor homes, travel trailers, fifth wheels, shall be occupied for more than seven (7) days within any ninety (90) day period on a lot unless approval shall be obtained from the Moultonborough Planning Board using subdivision regulations and the requirements of table i. All recreational vehicles occupied for more than seven (7) days within any ninety (90) day period on a lot shall require a State approved operational septic system.

G. No use of any land or structure in the Town of Moultonborough shall be permitted which generates any toxic waste as defined by the state of New Hampshire until a permit for such operations shall be obtained from the town. No such permits shall be issued until waste disposal procedures have been approved by the ground water division of the water supply and pollution control commission, and by the Moultonborough Planning Board, after consultation with appropriate engineers or other waste disposal advisers.

H. It is the specific intent of this ordinance to minimize impact created by use of property upon adjoining property, and specifically, but not limited to, proper provisions for parking, loading and unloading, noise, dust, glare from lights of vehicular traffic and/or illumination of site.

I. Height of buildings. No building shall be constructed in the Town of Moultonborough with overall height exceeding thirty-two (32) feet above ground level measured as the average of the vertical distances between the ridge of the building and the highest ground level point, and the ridge of the building and the lowest ground level point. This provision shall not apply to church steeples, chimneys, cupolas, silos, antennas, or unoccupied structures.

J. Lot dimensions and standards. A dwelling, mobile home, camper, R.V., structure, or building may be located, constructed, and used only on a lot, (to include R.V. and mobile home parks and campgrounds) having the minimum area for the soil and slope conditions as set forth at table i. Lot length shall not exceed the width of the lot by a multiple of more than 4.

K. Minimum shore frontage for a waterfront lot shall be one hundred fifty feet (150').

L. The exit down slope of the proposed driveway onto a State or Town road, cannot exceed 6%, 50' back from the driveway 'cut'.

ARTICLE IV

Waterfront Property

In addition to other provisions of this ordinance, the following specific terms and conditions shall apply to all property in the Town of Moultonborough with frontage on or over which deeded or other rights of access to public bodies of water in the Town of Moultonborough are granted.

A. Minimum lot size shall be 40,000 square feet. The provisions of Article II, section A, and Table I of this ordinance shall apply.

B. Every lot or parcel of waterfront property to be used in common shall contain a minimum area of 40,000 square feet plus 3,000 square feet for each additional dwelling unit. The area required for the beachfront, water access lot shall not be occupied by any dwelling unit. No portion of the waterfront lot may be counted to satisfy minimum lot size for construction or subdivision.

C. Minimum lot dimensions for each waterfront lot shall be as follows:

(1) Minimum shore frontage shall be 150 feet for the first dwelling unit to be granted access.

(2) An additional 150 feet of frontage is required for each additional dwelling unit after the first unit, where the additional unit is to be located within 250 feet from the reference line established by RSA 483-B, as amended.

(3) An additional 50 feet of frontage shall be required for each additional dwelling unit to be located beyond 250 feet from the reference line established by RSA 483-B, as amended.

(4) The same frontage may not be allocated more than once.

D. For each dwelling unit to be granted rights of access to the water, one (1) parking space shall be provided at the common use beach area for each such dwelling unit located more

than one-half mile (by road) from the public body of water.

E. Waterfront lots may be divided into boating areas and swimming areas.

(1) Adequate signs and other safety features shall be provided to ensure safe use of waterfront areas for boating and swimming.

(2) Boating areas shall be separated from swimming areas by natural or man-made dividers, and adequate signs shall mark the separation.

(3) All boating and swimming areas must comply with standards of the state of New Hampshire, and all regulations of agencies of the state of New Hampshire applicable thereto.

(4) One (1) toilet facility each for males and females shall be provided for each 25 lots or units (or portions thereof) granted rights of access.

(5) No docks shall attach to the land at any point closer than 20 feet from the boundary line of the property in question.

F. (1) Dug-in Boathouses in or over the water shall not be allowed. Proposed Boathouses at the time of the adoption of this section of the ordinance shall be eligible for a Town Building Permit until June 30, 2003.

(2) Existing boathouses may not be expanded.

G. Comprehensive Shoreland Protection

Purpose and Intent

The water quality of all lakes, ponds, rivers and streams is significantly affected by the land and its vegetation that surround these water bodies. This land is constituted as “shoreland”, and a portion of the shoreland from the water’s edge (reference line) back to 250 feet is protected by the State of New Hampshire under legislation – i.e., RSA 483B, the Comprehensive Shoreland Protection as amended (CSPA).

Shoreland vegetation such as trees and saplings, along with shrubs and natural groundcover, and their undamaged root systems, act as a natural filter of flow and runoff of surface, subsurface and deep ground water as well as wastewater; nutrients such as fertilizer; sediment; pesticides; and pollutants. In addition, tree and sapling canopies shade the shoreline itself, making the shoreline healthier by moderating the temperature of the water bodies.

Once there is a disturbance of shoreland vegetation, such as excessive cutting or removal, there is no surface filter or subsurface root system filter, and there is nothing to prevent the shoreland soil and any pollutants from being washed into or eroding into the water body. This in turn raises the temperature of the water body and promotes algae and weed growth, leading to a loss of water clarity and quality.

The Town of Moultonborough possesses more waterfront (Shoreland) property than any other municipality in the state; and the protection of the public waters that abut those lands is of paramount importance to the economic, cultural, recreational, and environmental well-being of the community. The Town of Moultonborough adopts this Section as part of Article IV of its Zoning Ordinance to ensure protection of those public resources:

The Comprehensive Shoreland Protection Act, New Hampshire, RSA 483-B as it may be amended (CSPA), which seeks to protect the state's public waters, is hereby incorporated and adopted herein, and reference must be made to the CSPA for its requirements and definitions.

In addition to the requirements of the CSPA and not in limitation thereof:

- (1) No person shall commence cutting down trees or saplings, within the natural woodland buffer, without first filing with the Code Enforcement Office a diagram of the waterfront buffer as set forth in the CSPA RSA 483-B:9, V.(a)(2)(D) and photographic documentation of the natural woodland buffer.
- (2) Complete copies of all applications and permit requests made to the Department of Environmental Services shall be contemporaneously filed with the Code Enforcement Office.
- (3) No building permit shall be issued by the Code Enforcement Officer/Building Inspector until such time as all permits, as contemplated by the CSPA RSA 483-B:5, are issued by the Department of Environmental Services. Should the Department of Environmental Services fail to render a decision in the time frame provided under CSPA RSA 483-B:5-a.V. and, as a result, a permit is issued by the Department of Environmental Services, the Code Enforcement Officer shall not issue a building permit unless the Code Enforcement Officer determines that the application made to the Department of Environmental Services meets the requirements of the CSPA.
- (4) The Code Enforcement Officer, or his designee, may, for cause, enter upon any land or parcel at any reasonable time to perform oversight and enforcement duties to ensure compliance under this Article of the ordinance and the CSPA.
- (5) This Article of the ordinance shall not in any manner be construed as being less restrictive than the CSPA.
- (6) The Town of Moultonborough may impose, as set from time to time by the Selectmen, fines, penalties, and remedies for non-compliance with this Article of the ordinance and the CSPA. Such fines and penalties may not exceed those as are set forth by the CSPA for non-compliance with the CSPA. Such fines, penalties, and remedies may be imposed against the property owner and any other person or entity, participating in the violation of this Article of the ordinance or the CSPA. The Town of Moultonborough may enforce the CSPA and impose such fines, penalties, and remedies for non-compliance with the CSPA, as authorized by the CSPA.
- (7) Appeals from the imposition of fines, denial of building permits, penalties and remedies issued by the Town of Moultonborough shall be construed as appeals of administrative decisions and shall be submitted to, and under the jurisdiction of, the Zoning Board of Adjustment. Requests for variances or

waivers from the provisions of this section shall be treated as any other request for variance or waiver and shall be submitted to, and under the jurisdiction of, the Zoning Board of Adjustment, except as may otherwise be reserved to the Department of Environmental Services under the CSPA. However, no variance or waiver shall be granted which would result in standards less restrictive than the CSPA.

(8) As of the effective date of April 1, 2008, this Section G. shall repeal and replace Section G. of Article IV. entitled "Removal of Trees, Shrubs and Vegetation" of the Moultonborough Zoning Ordinance.

ARTICLE V

SIGNS

No sign, banner, poster or other advertising device shall be erected or placed on any property or outside of any structure in the Town of Moultonborough or be affixed to a vehicle and allowed to remain on the premises with intent to serve as a sign without permit as deemed by the Selectmen or their agent. No rights are acquired for signs not permitted due to the passage of time.

A. The following signs are allowed and are exempt from the sign permit procedures:

- (1) Signs indicating the existence of private property, forbidding trespass or other activities on the property.
- (2) Signs located on private property and intended to regulate or guide activities within the property even though such signs may be incidentally visible from outside the property, provided that if it is a commercial property the placement of such signs shall first obtain site plan approval from the Planning Board.
- (3) Signs for non-profit organizations, charities, and service organizations, provided said signage is not commercial in nature. These signs shall be non-illuminated.
- (4) Temporary real estate signs advertising sale of the property on which the signs are located, not exceeding three (3) feet by four (4) feet in size and limited to two signs per lot. Additionally, off premise directional signs stating real estate or house for sale, must comply with the 1993 policies of the Moultonborough Board of Selectmen or amendments there to.
- (5) Non-illuminated home business signs which shall not exceed one (1) double sided sign per property and shall not have a surface area in excess of eight (8) square feet per sign.
- (6) Up to two contractor signs are allowed on the construction site property only, and are limited to not more than eight (8) square feet and must be removed upon completion of work and/or before occupancy of the property.

B. Illuminated signs: Permitted permanent signs may be illuminated by either external lighting or internal lighting, subject to the requirements set forth herein. All illuminated signs shall be shielded so

as not to produce glare, undue distraction, confusion, nuisance or hazard to vehicular traffic or adjacent structures or properties. Lighting shall be so shaded, shielded, directed and maintained at a sufficiently low level of intensity to avoid ambient light leakage.

1. Externally Illuminated Signs: External lighting shall be shielded from view and shall cut-off all upward transmission of light above the level of the sign. Flashing, rotating and intermittent lighting are prohibited.

2. Internally Illuminated Signs: Internally lit signs shall be contained in a translucent covering so that the source of lighting shall be unidentifiable. In no event shall a sign have any animation, flashing, changing, or intermittent image or illumination, including, but not limited to, electronic, video, fixed, floating or moving text and/or picture. In no event shall a sign be illuminated by using television, plasma, digital screens and/or light emitting diodes, strobe lighting, liquid crystal displays, fiber optics, holograph or hologram displays, other than those erected by a public entity for public safety and/or traffic control purposes. Internally illuminated signs shall not be permitted in the Village Center Zoning District.

3. Hours of Illumination: Signs may be illuminated from one hour prior to and during hours of business operation to one hour after business operation, or from 6 am to 10 pm, whichever is longer. Nothing contained herein shall limit hours of illumination for signs that are intended to be warning signs for directional or safety purposes.

C. All signs shall be maintained in good condition and repair. Any business that closes its operation permanently shall remove any signs in connection with that business within 30 days. The selectmen or their agent shall notify sign owners, orally or in writing, to remove or repair any sign which is in violation of the sign ordinance or becomes in disrepair. If the owner fails to comply immediately after notice, the selectmen shall have the sign removed at the expense of the owner.

D. All costs to include collection, fines, penalties, disposal of unlawful signs, including attorney's fees, costs and expenses related to the removal of an unlawful sign shall be borne by the violator. The Selectmen shall from time to time set the fines and penalties related to unlawful signs.

E. A Commercial site is allowed two (2) advertising sign boards on the property where the business is located, either two (2) single faced sign boards, each face not exceeding 36 square feet, or one (1) double faced sign board with each face not exceeding 36 square feet. Additionally, each business may display a business identification sign externally on the building and such sign shall not exceed 16 square feet. Each commercial site is allowed one (1) double faced marquee sign, not to exceed 5 square feet, affixed to the main signboard. No sign may advertise a business off site with the exception of directional signs as per Section H.

F. No sign shall be placed within the limits of any highway right of way or private right of way or in such a position as to endanger traffic on a roadway by obscuring a clear view or to create confusion with official street signs. Illuminated signs shall be shielded in such a way as to produce no glare, undue distraction, interference, or hazard for area traffic.

G. Temporary Signs, Banners, Flags and Posters: Signs, banners and posters including movable mobile reader boards, may be erected for a temporary purpose not to exceed a period of fifteen (15) consecutive days, not more than four times in any calendar year, subject to the owner obtaining a temporary sign permit. Temporary signs shall be limited to no more than two at any one time on any parcel and shall not exceed twelve (12) square feet per side. Banners or flags indicating that a business is open may be displayed during business hours without permit or other limitations of temporary signs. Temporary signs shall not interfere with a driver's line of sight from any driveway, intersections or along roads, nor shall it be placed less than 20 feet from the nearest paved portion of the road or traveled portion of an unpaved road.

H. Directional signs on Town roads, not greater in size than four (4) square feet for business identification and direction only, may be allowed by permit for each business off site at the discretion of the Board of Selectmen if it is deemed necessary by the Selectmen for traffic and safety reasons.

I. The height of any free-standing sign shall not exceed 20 feet above surrounding road grade or two (2) feet above the roof ridge of any building to which it is affixed.

J. Any sign which is damaged or destroyed may be replaced and/or restored to its former condition within 180 days of the date of its damage or destruction.

K. Application. Applications for Sign Permits shall be made upon a form provided by the Town for this purpose. Any changes to signs shall require a new permit. Applications for sign permits involving nonresidential sites shall be made concurrently with site plan applications to the Planning Board. The application shall include the following information:

i Name, address, phone, and if available, fax and e-mail, of the owner, or authorized agent of the owner, of the parcel upon which the sign is proposed to be placed.

ii Location of the building, structure, and parcel on which the sign is or will be attached or erected.

iii. Position of the sign in relation to nearby buildings, structures, property lines, existing or proposed rights-of-way, ordinary high water marks of waterways, and the setback of applicable zoning ordinances.

iv. The method of illumination, if any.

v. The size and height of the sign.

vi. Two copies of the plans and specifications. The method of construction lettering or graphics, and the type's colors to be used in construction, and/or attachment to a building or in the ground shall be explained in the plans and specifications.

vii. The proposed dates of display of the sign, in accordance with Section I, as

applicable.

viii. The zoning district (including Shoreland zoning) in which the sign is to be placed.

ix. A statement that: "Any change in the information in this Application, such as change of address, shall be submitted to the Agent within seven (7) days after the change."

x. Such other information as the Code Enforcement Office may require to ensure compliance with this Sign Ordinance, and any other applicable laws.

L. Permit Fees. Permit Fees for Signs shall be established by the Select Board and the Select Board shall update said schedule from time to time as the Select Board deem appropriate. The Permit Fees should relate to the cost of issuing the permit and may vary based on the size, type, and height of the Sign.

ARTICLE VI

COMMERCIAL USES

A. GENERAL PROVISIONS

(1) The Commercial Districts established by the Ordinance are designed to promote and protect the health, safety, convenience, order, prosperity and the general welfare of the Town of Moultonborough. They are intended to provide areas for businesses which rely on automobiles and delivery trucks in day to day operation while continuing to keep intact the "strong desires of Moultonborough residents to preserve the town's rural attributes," consistent with the goals of the Master Plan.

(2) Because Route 25 is a highly visible tourist route it is important that all proposed uses have attractive landscaping and signs, and other aesthetic qualities. The height and locations of structures should ensure that the scenic views in the area are protected. The Planning Board shall continue to review commercial uses and changes of use through the Site Plan Review process.

(3) Route 25 is a main east west highway with high traffic volumes and frequently congested conditions, therefore, driveways and other points of access should be limited to the greatest extent possible and permitted in the safest possible locations. The Planning Board will consult with the NH Department of Transportation and the property developer to arrive at the best possible access management solutions as described in the town's Site Plan Review regulations and a Memorandum of Understanding between the Town and the DOT.

(4) Outside the Commercial Zones, the remainder of the town is a Residential /Agricultural Zone, where a commercial use is allowed only by Special Exception from the Zoning Board of Adjustment and Site Plan Approval from the Planning Board.

(5) Any proposed change of any existing use of commercial property shall require approval by the Moultonborough Planning Board under the provisions of site plan review.

(6) All lots in the commercial zones and other commercial lots shall require Planning Board approval before tree cutting or topographical changes can be made. Trees may be removed without Planning Board approval which are a danger to persons or property or which are dead or diseased.

B. GENERAL REQUIREMENTS FOR USES IN COMMERCIAL ZONES

The following requirements and standards shall apply to commercial uses in both Commercial Zone A and Zone B.

(1) Minimum Lot Sizes

Minimum lot sizes will be determined in accordance with Article III, A.

(2) Lots in Multiple Zones

Any lot lying in more than one zone is not considered a subdivided lot. Each portion of such a lot shall be subject to the provisions governing the zone in which that portion lies.

(3) Maximum Square Footages of Buildings or Structures Permitted in Commercial Zones A and B.

The building footprint of any individual building or structure located within Commercial Zone A or Commercial Zone B shall not exceed 12,500 square feet. A special exception may be granted to allow for an increase of up to an additional 12,500 square feet (the maximum total allowed shall not exceed 25,000 square feet); subject to meeting the following criteria:

- 1) At least 50% of the required parking for the combined commercial uses shall be situated to the rear of the structure (when viewed from the roadway with highest traffic volumes accessing the site).
- 2) The parking area for the structure is interconnected with an adjoining lot, or, in a case where adjoining property is undeveloped, provisions are made to reasonably accommodate interconnection of parking lots in the future.
- 3) The primary access driveway for the structure is shared with 1 or more other lots for access management purposes.
- 4) The architectural design of the structure can reduce the visual mass of the building by creating the appearance of smaller scale interconnected buildings.

C. BOUNDARIES OF COMMERCIAL ZONES AND PERMITTED USES

Commercial Zones within the Town of Moultonborough shall be described and bounded as follows, and the following uses shall be permitted as identified to each Commercial Zone.

(1) Commercial Zone "A"

a. Commercial Zone “A” shall include all land within 500 feet of the edge of the right-of-way on either side of Route 25 from the Moultonborough / Center Harbor Town Line to the intersection of Blake Road.

b. The following uses are permitted in Commercial Zone “A”:

- i. Retail establishment selling goods, such as food and pharmaceuticals, general merchandise, such as dry good, apparel and accessories, furniture and home furnishings, home equipment, small wares, and hardware and including discount and limited price variety stores.
- ii. Offices
- iii. Bank
- iv. Personal and professional services
- v. Motels and hotels, meeting halls (e.g. Elks), bed and breakfast
- vi. Auto service stations
- vii. Auto/Boat sales, rentals, service and repair business
- vii. Wholesale business with no outdoor storage
- ix. Clinics
- x. Churches, commercial schools, child care facilities, nursing homes
- xi. Public facilities, e/g police, fire station, town hall
- xii. Accessory storage facility for retail establishment permitted in #i above
- xiii. Indoor movie theater
- xiv. Restaurants and eating establishments
- xv. Any use permitted in the Residential/Agricultural Zone
- xvi. Multi-family housing
- xvii. Personal wireless services facility communication tower
- xviii. Any use not listed above if the property owner has obtained a Special Exception from the Zoning Board of Adjustment.

(2) Commercial Zone “B”

a. Commercial Zone “B” shall include all land within 500 feet of the edge of the right-of-way on either side of Route 25 at the intersection of Route 109 South to the Moultonborough / Sandwich Town Line.

b. The following uses are permitted in Commercial Zone “B”

- i. All uses permitted in Commercial Zone “A” plus
- ii. Permitted Light Industrial Use: Light manufacturing, research and testing, assembly, fabrication, processing, reproducing, packaging, packing or bottling.
- iii. Any use not listed above if the property owner has obtained a Special Exception from the Zoning Board of Adjustment.

(3) Commercial Zone “C”, The Village

a. Commercial Zone “C” is established with the intent of maintaining the character of the Village, or Corner as sometimes known, which has, through roughly 200 years of development, maintained a consistent character in massing, setback, density and building type and design. It shall include all land within 500 feet from the centerline of the road on either side of Route 25 from Blake Road to the intersection of Route 109 South.

b. The Following uses are permitted in Commercial Zone “C”

- i. All uses permitted in Commercial Zone “A”, and communication towers for personal wireless services facilities if they are incorporated into another permitted building.
- ii. “Mixed use” is encouraged, especially the mix of residential, retail and / or institutional within the same development.

c. Because requirements within this zone are intended to encourage development that will be compatible with the special character of the village, they may be, in some instances, separate from regulations for other commercial lots in the Town of Moultonborough, see under F. To maintain the character of the zone, developments shall have attractive landscaping (especially within the front setback) and signage, and the building appearance shall be consistent with rural New England Architecture, approved by the Planning Board. The inclusion of sidewalks are allowed within the setbacks.

d. Maximum Square Footages of Buildings or Structures Permitted.

The building footprint of any individual building or structure located within Commercial Zone C shall not exceed 6,000 square feet. A special exception may be granted to allow for an increase of up to an additional 6,000 square feet (the maximum total allowed shall not exceed 12,000 square feet); subject to meeting the following criteria:

- 1) At least 50% of the required parking for the combined commercial uses shall be situated to the rear of the structure (when viewed from the roadway with highest traffic volumes accessing the site).
- 2) The parking area for the structure is interconnected with an adjoining lot, or, in a case where adjoining property is undeveloped, provisions are made to reasonably accommodate interconnection of parking lots in the future.
- 3) The architectural design of the structure is consistent with the historical character of the Village and the visual mass of the building can be sufficiently reduced by creating the appearance of smaller scale interconnected buildings.

D. Commercial Use within the Residential/Agricultural Zone

A commercial use is permitted within the Residential/Agricultural Zone if the owner of the property obtains a Special Exception from the Zoning Board of Adjustment and Site Plan Approval from the Planning Board. A substantial change in use or a change to a different use within the Residential/Agricultural Zone may require approval by the Moultonborough Zoning Board of Adjustment of a new or amended special exception.

Maximum Square Footage of Buildings or Structures Permitted by Special Exception within the Residential/Agricultural Zone shall be the same as for Buildings or Structures Permitted within Commercial Zone C, the Village Zone.

E. Special Exceptions

In any zone, when the Zoning Board of Adjustment is asked to approve a special exception, the Board shall determine that all general provisions and regulations of this ordinance are met, and the board shall hold an abutters' hearing to hear any valid objections based on demonstrable fact. The board, in acting on an application for a special exception, shall and must take into consideration, but shall not be limited to, the following conditions:

- (1) A specific site is an appropriate location for the use or structure.
- (2) The use will not be incompatible with the character of the neighboring land uses.
- (3) That property values in the district will not be negatively impacted or reduced by such a use.
- (4) There will be no nuisance or serious hazard to vehicles or pedestrians.
- (5) Adequate and appropriate facilities will be provided for the proper operation of

the proposed use.

(6) The proposed use shall comply with the minimum land space requirements.

(7) The capacity of the existing roads and highways to carry related traffic shall be adequate.

The applicant shall have the burden to demonstrate substantial compliance with each of these conditions.

The board of adjustment may impose additional special conditions in granting a special exception, and the board shall apply the specific special exception standards contained below. These conditions may include generally:

(1) Increasing the required lot size in order to protect the adjacent properties.

(2) Limiting the lot coverage or height of buildings because of obstruction to view and/or reduction of light and air to adjacent properties.

(3) Control of location and number of vehicular access points to the property.

(4) Limiting the number, location, and size of signs on site.

(5) Requiring suitable onsite landscaping screening, and buffer areas where necessary to reduce noise, glare, odor, dust, or other negative impacts generated by the proposed use and to maintain the property in a character in keeping with the surrounding area.

(6) To provide for specific layout of facilities on the property such as the location of the building, parking spaces, and traffic patterns so as to minimize the effect on adjoining properties.

(7) To require that in cases of conversions of existing structures into two (2) or more dwelling units or lodging units or into a more intensified use, the lot or land area is sufficient in size to support an adequate subsurface sewage disposal system according to the soil and slope provisions set forth in table 1 above.

(8) To require further that soil types and slopes be identified on an adequate plan.

(9) To require inspection of existing sewage disposal systems and certifications from professional engineers employed by the town at the cost of the applicant to report upon the adequacy of the systems for their intended purpose.

F. Requirements for Commercial Uses

The following requirements and standards shall apply to all commercial uses throughout the Town.

(1) Frontage.

All new commercial lots shall have a minimum of 150 feet of frontage. All other existing lots (for commercial use) under 150 feet shall satisfy the Zoning Board of Adjustment that they meet the following criteria:

- a. The lot is aesthetically appropriate
- b. Traffic congestion would not be a factor
- c. A safe sight distance exists
- d. Safety would not be jeopardized by the Volume of use

(2) Setbacks And Buffers For Buildings And Structures.

	<u>Zone A</u>	<u>Zone B</u>	<u>Zone C</u>
Front	50 feet	50 feet	25 feet
Side	25 feet	25 feet	10 feet
Rear	25 feet	25 feet	10 feet

- a. In addition, for commercial uses in Zones A and B, there shall be a twenty-five (25) foot, vegetative buffer, natural or landscaped, within the front setback between the building and the roadway, along the full length of the lot. Where existing sites being proposed for redevelopment do not allow sufficient space for this twenty-five (25) foot buffer to be installed, the Planning Board may waive this requirement. For purposes of this Article, Redevelopment shall mean any physical change to the existing site requiring Planning Board approval.
- b. Placement of inventory, equipment and storage of materials shall be subject to Planning Board Site Plan Review.

(3) Lot Coverage.

In Commercial Zones A and B, the coverage of any lot, by buildings, inventory and equipment, storage areas, parking and driveway area and any impervious surfaces, shall not exceed 50 percent of the lot, and the open area shall be devoted to landscaping or natural growth. No use of open areas, other than as landscaping and green space, is permitted. Any easement for public use, such as a pathway or walkway through the lot shall not be counted in the 50 percent lot coverage calculation. In the Village Zone, Commercial Zone C, the lot coverage may be increased up to a maximum of 65 percent.

(4) Height Of Building.

No building shall be constructed in the Town of Moultonborough with more than two (2) stories, not counting any basement below mean ground level, or with an overall height exceeding thirty-two (32) feet above ground level, at the building foundation. This provision shall not apply to church steeples, chimneys, cupolas, silos, antennas, or unoccupied structures.

(5) Lighting.

No commercial use or establishment shall produce strong, dazzling light or reflection of the light beyond its lot lines onto neighboring properties, or onto any town way so as to impair the vision of the driver of any vehicle upon that town way. Lighting shall also comply with the applicable federal and state regulations. Commercial sites will be limited to full cut-off technology for pole lighting applications only and cut-off technology for all other applications. Full cut-off fixture is defined as a luminaire light distribution where zero candela intensity occurs at an angle of 90 degrees above nadir, and at all greater angles from nadir. Additionally, the candela per 1000 lamp lumens does not numerically exceed 100 (10%) at a vertical angle of 80 above nadir. Cut-off fixture is defined as a luminaire light distribution where the candela per 1000 lamp lumens does not numerically exceed 25 (2.5%) at an angle of 90 degrees above nadir, and 100 (10%) at a vertical angle of 80 degrees above nadir. Candela is a unit of light intensity – formerly candle. Lumens are a unit defined as the amount of light emitted by the lamp, not the amount of light reaching the target area or surface.

(6) Parking And Loading Areas

- a. All commercial uses will provide adequate off street, on site loading and parking areas. A single parking space is defined as being 200 square feet (10' x 20') in area reserved exclusively for use as a parking space. Parking for multiple cars shall allow adequate area for entrance and egress.
- b. For hotel, motel and other tourist accommodations, one (1) space for each unit, and one (1) space for each employee anticipated to be on the premises at one time.
- c. For hospitals, nursing homes, or other overnight care facilities, off-street parking shall be provided at the rate of one (1) space per bed plus one (1) space for each of the maximum number of employees anticipated at the premises at any given time.
- d. For commercial operations, off-street, on site parking shall be provided at the rate of one vehicle per employee and space for each anticipated patron vehicle on the premises at the same time. All commercial facilities shall have a minimum of three (3) parking spaces, and all shall provide adequate off-street, on site parking for users of the facilities.
- e. Parking shall not be located within the setbacks, though green buffers and vegetative screening is permitted within the setback.
- f. In Commercial Zone C, in any new construction all parking shall be in the rear or on the side of a new or redeveloped building, with parking no farther forward than the front line of the building and all loading shall be in the rear. Additionally, in

Commercial Zone C, where general parking is nearby and sidewalks or public pathways are available, requirements for onsite parking for commercial uses may be waived. For mixed residential and commercial uses, only the commercial use shall be eligible for this waiver. All residential uses must have on-site parking.

- g. For commercial uses, all parking shall be screened from adjacent lots by either a vegetated screen or stone wall no less than four (4) feet in height, or a landscaped berm no less than four (4) feet in height, including the landscaping. For mixed commercial and residential lots with on-site parking, all parking must be screened in the above manner.
- h. For commercial uses in the Commercial Zone C (The Village), wherever feasible, development shall provide for future connections between parking lots via shared access easements, or similar binding documents, between parking area(s) and the side and rear lot lines. These shared access easements must be established and physically constructed if abutting an existing commercial use. In the event that the existing abutting use is not commercial, the access easement does not need to be physically created, but must be established for future use of a size to allow for two-way vehicular traffic, as described in the Site Plan Regulations, and must include the area for the easements in the lot coverage calculations. The easements shall only permit commercial traffic between abutting commercial lots, and must be on the final recorded Site Plan.

(7) Safe Sight Distance. For commercial operations, minimum safe sight distances along the highway providing access to the facilities at driveways and/or entrances thereto shall be as follows:

- a. For highways with speed limits of 30 M.P.H. or lower: 200 feet.
- b. For highways where the speed limit is between 31 M.P.H. and 40 M.P.H.: 275 feet.
- c. For highways where the speed limits are between 41 M.P.H. and 50 M.P.H.: 350 feet.
- d. For all state highways or roads with speed limits in excess of 50 M.P.H.: 400 feet.

Safe sight distance is defined as a straight line view which encounters no obstruction measured between two (2) points along the center line of the street entirely within the street right of way, each point to be at a height of four (4) feet above the road surface.

(8) Other

- a. No use of any land or structure in the Town of Moultonborough shall be

permitted which generates any toxic waste as defined by the state of New Hampshire until a permit for such operations shall be obtained from the town. No such permit shall be issued until waste disposal procedures have been approved by the ground water division of the water supply and pollution control commission, and by the Moultonborough Planning Board, after consultation with appropriate engineers or other waste disposal advisers.

b. All commercial uses which may produce cinders, dust, gases, odors, refuse matter, hazardous waste, solid waste, smoke, vapors, electromagnetic or radioactive emission shall be completely and effectively confined within a building or so regulated as to prevent any nuisance or hazard to the public health or safety, and further provided that no unreasonable noise, vibrations, or other disturbance is noticeable at the boundary of the premises.

(9) Compliance. Commercial structures and uses throughout the Town shall comply with all other requirements of this ordinance which relate to commercial uses and structures.

(10) Pre-Existing Lawful And Approved Uses. All lawful and approved structures and commercial uses existing as of the date of the posting of the public hearing of the 1997 amendment (January 5, 1997) to the ordinance are deemed to be pre-existing non-conforming uses within the meaning of Article VII of this ordinance.

G. Adult uses/sexually oriented businesses

(1) Purpose And Intent. It is the purpose of this section to regulate the adverse secondary effects of sexually oriented businesses in the interest of the public health, safety and welfare, including, but not limited to, protection of property values, separation of incompatible land uses, location or such uses near major regional highways, and prevention of blight and crime: and, provisions of this section have neither the purpose nor the effect of imposing limitations or restrictions on the content of any communicative materials, including sexually oriented materials; and it is not the intent nor the effect of this section to restrict or deny access by adults to sexually oriented materials protected by the first amendment, or to deny access by distributors and exhibitors or sexually oriented entertainment to their intended market; and, neither is it the intent nor effect of this section to condone or legitimize the distribution of obscene material.

(2) Adult Uses/Sexually Oriented Businesses Defined. The terms "adult use and sexually oriented business" shall mean and include any business where more than fifteen percent (15%) of the goods or other items on display, or presentation time of live or recorded performances, are characterized by depiction, description or display of, or use in connection with "sexual conduct," as defined in RSA 650:1, or where more than fifteen percent (15%) of the revenue of the business is from such goods or presentations. Such goods or other items include, but are not limited to theaters,

motion picture displays, night clubs, bars or similar establishments, nude modeling studios, massage parlors, or escort agencies.

(3) Where Allowed. Adult uses shall be allowed as a special exception. Granting of a special exception for adult uses shall be in accordance with Article VI, provided that the following location standards and site appearance criteria are complied with.

- a. No structure containing an adult use or a sexually oriented business shall be allowed within Moultonborough's designated drug free school zone, within 1,000 feet of the property line of a church, cemetery, school, day care center, or residential structure, and shall not be located less than 300 feet from the front property line.
- b. No sexually explicit materials or advertising shall be visible from outside the building or town boundary line.
- c. No private vending rooms or booths shall be constructed unless one side is always open to a public central area.
- d. No one under the age of 18 shall be permitted inside such a use, structure, or business, and a procedure shall be developed to keep those under 18 from entering the building.
- e. All operators and employees shall be of good moral character, meaning, among other things, no operator or employee shall have been convicted of a misdemeanor or felony of a sexually related nature within the previous five years.

(4) Severability. The invalidity of any provision of this article shall not affect the validity of any other provision of the article nor of the zoning ordinance as a whole.

ARTICLE VII

Miscellaneous

A. Specifics for particular exceptions. Before granting an application for special exception, the board of adjustment shall determine, after public hearing, that all general requirements for the issuance of a special exception have been met and that the particular requirements for specific special exceptions have been met as set forth herein.

(1) Condominium Conversions. The board of adjustment may grant a special exception to permit a conversion of an existing use to condominium ownership under RSA 356b:5 if the applicant meets all provisions of this ordinance.

- a. There will be no increase in the number of units.

- b. There will be no increase in the number of bedrooms per unit.
- c. Use meets current standards for septic and water systems.
- d. Final condominium documents shall be filed with the Planning Board for approval prior to the sale of the first unit. Review of documents shall be accomplished by town counsel at applicant's expense. Deed covenants shall provide for ownership and maintenance of common open space, roads, utilities, and amenities by compulsory membership in a homeowners association and mandatory assessment of costs therefor.
- e. The final plan of conversion shall meet requirements of the Moultonborough subdivision regulations.

(2) Multi-Family And Cluster Development. For the purpose of this ordinance, cluster development shall be the grouping or clustering together of dwelling units and/or other structures without strict compliance with all provisions in this ordinance, provided the groups or clusters are separated from other property and/or from each other by land area owned in common by the owners of units in the development. The purpose of such a development is to preserve the natural beauty of existing undeveloped land and to encourage less intensive residential development, to allow diversity of housing opportunities with open space areas and increased pedestrian and vehicle safety, and to allow efficient use of land, streets, and utility systems.

- a. The total number of units shall not exceed the number of units permitted under the soil and slopes provisions of this ordinance, unless the lot is served by municipal sewer and is approved for Multi-family dwelling units.
- b. All common land shall be held by a corporate homeowners association or other common ownership approved by the board. The developer shall include in the deed to the owners beneficial rights in the common land including a covenant against development of said land except for certain structures related to specified noncommercial, recreational uses. The proportionate value of the common lands shall be included in the tax valuation of each lot. The covenants shall include proposed easements and other provisions relating to density and nonresidential uses. The developer shall provide for mandatory assessments of fees for the expense of maintaining, repairing, and replacing common areas, common utilities, septic systems, and water systems as well as for the ownership and maintenance of common open space areas as may exist to ensure their continuity.
- c. The total ground area occupied by structures and required parking shall not exceed 20% of the total ground area of the development.

d. Developer shall provide for a community water system and a community septic system adequate to meet current standards and shall ensure its future maintenance.

(3) Marina Condominiums

a. Minimum lot area of 40,000 square feet plus 4,000 square feet per boat slip or per dry storage space for use during boating season.

b. Application shall show plan for winter storage, shall provide for play areas, shall provide for 1/2 parking space per boat slip and for each dry storage space except for those used exclusively for winter storage.

c. Application shall show provision for one (1) men's shower, one (1) men's toilet facility and sink; also one (1) women's shower, toilet facility and sink for each thirty (30) boat slips or fraction thereof.

d. The application shall demonstrate a plan for safe boat and vehicle traffic.

e. The marina condominium shall provide a pumping station facility for the removal of holding tank waste. The facility shall meet minimum standards of the water supply and pollution control commission and all other applicable regulations of the state of New Hampshire.

f. The condominium declaration shall designate a person as on-site manager for all times the facility is open. It shall specify that future changes in the declaration or the marina will require Planning Board approval and it shall provide for the termination of all commercial activity at the marina.

(4) Home Occupations. Home occupations which are accessory to and incidental to the principal use of a residence are permitted with the following limitations. A residence may be used by the owner(s) or resident(s) for a professional office, keeping materials or tools of trade, or for occupations such as hairdressing, sewing, manufacture of craft, food, or other products for sale, or any other occupation that can be done at home without degrading the residential nature of the building or of the surrounding properties. Home occupations which are not visible from or detectable outside the premises from adjacent properties and which employ no more than one (1) person in addition to the resident(s) or property owner(s) shall be permitted. Home occupations which are visible from outside the premises or which employ more than one (1) person other than the owner(s) or resident(s) shall require a special exception, and application therefore shall be made to the Zoning Board of Adjustment. Such application shall provide that all parking shall be accomplished on the site, no business material shall be stored, and no business activities shall be conducted in plain view of abutting properties, and no more than 25% of the gross floor area shall be used for the business. Outdoor storage connected with the home occupation shall not be permitted.

B. Non-conforming uses and properties.

(1) All non-conforming properties and uses in the Town of Moultonborough at the time of the adoption of this ordinance may continue in their present use. If such non-conforming use is determined discontinued or abandoned, any future use shall, thereafter, conform to the regulations of the Town of Moultonborough, and the non-conforming use may not, thereafter, be resumed without approval from the Zoning Board of Adjustment.

(2) Subject to the terms of this subsection, a non-conforming use may be altered and expanded as the business and conditions warrant:

- a. Such expansion must not make any existing, conforming structure or use non-conforming.
- b. Expansion of a structure must not violate the setback provisions of this ordinance, unless the structure is already non-conforming as to setbacks, and a special exception has been granted pursuant to the terms of b (3) below.
- c. Such expansion shall, in no event, cause the structure to violate the height limitation of this ordinance.
- d. Such expansion shall not cause the use of such a property to be significantly or materially altered in purpose, unless a new special exception is granted pursuant to the terms of this ordinance.

(3) Expansion of Non-Conforming Primary Structures. Non-conforming primary-structures may be expanded in accordance with the terms of a special exception issued by the Zoning Board of Adjustment. Plats submitted under this provision are required and must depict the location of the structure and the affected lot lines by a licensed surveyor. The Board must find the following factors to exist before issuing such a special exception:

- a. The proposed expansion must intrude no further into any setback area than does the existing structure.
- b. The expansion must have no adverse impact on the view, light and air of any abutter.
- c. The expansion must not cause property values to deteriorate.
- d. The expansion must not impede existing rights of access or egress.
- e. That portion of the proposed expansion, which will intrude into the

setback must, in no event, exceed the footprint square footage of that portion of the structure which presently intrudes into the setback, regardless of the number of applications made over the time under this subsection.

f. In the event the non-conforming structure contains a commercial use, there must be no adverse impact on access, traffic, parking, lighting or other safety or visibility features of the existing structure.

g. A special exception under this subsection may be granted only as to expansions into the side, front, and rear setbacks, and is not available for expansions which will violate the height restrictions of this ordinance.

h. A special exception shall not be granted that will result in violation of setbacks not already affected.

(4) Such expansion shall not cause the use of such property to be significantly or materially altered in purpose, unless a new special exception is granted pursuant to the terms of this ordinance.

Non-conforming buildings which are destroyed by fire or other casualty may be rebuilt or replaced if the degree of non-conformity is not increased and if the reconstruction takes place within 1 year of the casualty.

Non-conforming lots in existence at the time of adoption of this ordinance shall be considered eligible for a building permit without application for approval of variance from ZBA so long as all other requirements for issuance of a building permit are met.

Non-conforming lots which are contiguous and under the same ownership may be developed only with the adjacent lot(s).

C. Telecommunication Towers/Sites

(1) Communication towers and commercial antennas shall not exceed the greater of twenty (20) feet above the natural tree canopy of the lot, thirty-two (32) feet in height, or twenty (20) feet above the ridge of any building on which it is attached. All new communication towers and commercial antennas shall reserve two locations on each tower or antenna for transmission and reception equipment for use by police, fire and other emergency service providers, as such providers may be designated from time to time by the Town of Moultonborough. The owner of the land upon which the communication tower or commercial antenna is located and the owner of the communication tower or commercial antenna itself, shall also provide installation, access, and use of poles, wiring, cables, conduits and pipes thereto, all at no charge. The Town of Moultonborough shall be responsible for reimbursement of electric costs incurred for the use of such equipment at the same rates as that charged by the

local electric utilities for a commercial site. An appropriate Non-Cancelable Security Bond covering cost of removal of communication towers and commercial antennas shall be required.

ARTICLE VIII

Floodplain Development

A. The following regulations in this ordinance shall apply to all lands, in the Town of Moultonborough, designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Rate Maps (FIRM), dated December 21, 1979, which are declared to be a part of this ordinance and are hereby incorporated by reference.

B. Definition of Terms. The following definitions shall apply only to this Floodplain Development Article, and shall not be affected by the provisions of any other ordinance of the Town of Moultonborough.

"Area of Special Flood Hazard" is the land in the floodplain within the Town of Moultonborough subject to a one-percent or greater possibility of flooding in any given year. The area is designated as zone A on the Flood Hazard Boundary Map (FHBM) and is designated on the FIRM as Zone A.

"Base flood" means the flood having a one-percent possibility of being equaled or exceeded in any given year.

"Basement" means any area of a building having its floor subgrade on all sides.

"Building" - see "structure."

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operation.

"FEMA "means the Federal Emergency Management Agency.

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland or tidal waters, and (2) the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood Insurance Rate Map" (FIRM) means an official map incorporated with this ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Moultonborough.

"Floodplain" or "Flood-prone area" means any land area susceptible to being inundated by water from any source (see definition of "Flooding").

"Flood proofing" means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

"Floodway"- see "Regulatory Floodway"

"Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers, and ship building/repair facilities but does not include long-term storage or related manufacturing facilities.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic Structure" means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - 1) By an approved state program as determined by the Secretary of the Interior, or
 - 2) Directly by the Secretary of the Interior in states without approved programs.

"Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such an enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this Article.

"Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 days.

"Mean sea level" means the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

"100-year flood" - see "base flood"

"Recreational Vehicle" is defined as:

- A. built on a single chassis;
- B. 400 square feet or less when measured at the largest horizontal projection;
- C. designed to be self-propelled or permanently towable by a light duty truck; and
- D. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

"Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface

elevation. These areas are designated as floodways on the Flood Boundary and Floodway Map.

"Special flood hazard area" means an area having flood, mudslide, and/or flood-related erosion hazards, and shown on an FHBM or FIRM as zone A, AO, AI-30, AE, A99, AH, VO, VI-30, VE, V, M, or E. (See - "Area of Special Flood Hazard").

"Structure" means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

"Start of Construction" includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

"Substantial Improvement" means any combination of repairs; reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty (50) percent of the market value of the structure. The market value of the structure should equal: (1) the appraised value prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

"Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.

C. The code enforcement officer shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:

- (1) be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,
- (2) be constructed with materials resistant to flood damage,
- (3) be constructed by methods and practices that minimize flood damage,

(4) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

D. Where new or replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area the applicant shall provide the code enforcement officer with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

E. For all new or substantially improved structures located in special flood hazard areas, the applicant shall furnish the following information to the building inspector:

(1) the as-built elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement.

(2) if the structure has been floodproofed, the as-built elevation (in relation to NGVD) to which the structure was floodproofed.

(3) any certification of floodproofing.

The code enforcement officer shall maintain for public inspection, and shall furnish such information upon request.

F. The code enforcement officer shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U. S. 1334.

G. Riverine situations and alteration or relocation of watercourses.

(1) In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Environmental Services Department and submit copies of such notification to the Building Inspector, in addition to the copies required by the RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wetlands Board.

(2) The applicant shall submit to the code enforcement officer certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.

(3) The code enforcement officer shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone A meets the following floodway requirement:

"No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge."

H. Miscellaneous.

(1) In unnumbered A zones the code enforcement officer shall obtain, review, and reasonably utilize any 100-year flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site approvals).

(2) The code enforcement officer's 100-year flood elevation determination will be used as criteria for requiring in zone A that:

a. All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100-year flood elevation:

b. That all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the 100-year flood level; or together with attendant utility and sanitary facilities, shall:

(i) be floodproofed so that below the 100-year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;

(ii) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

(iii) be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section;

(3) All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the 100 year flood elevation; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces;

(4) All recreational vehicles placed on sites within Zones A1-30, AH, and AE shall either:

a. be on the site for fewer than 180 consecutive days;

b. be fully licensed and ready for highway use; or

c. meet all standards of Section 60.3 (b) (1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for "manufactured homes" in Paragraph (c) (6) of Section 60.3.

(5) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements: (1) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage; (2) the area is not a basement; (3) shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

I. Variances and Appeals.

(1) Any order, requirement, decision or determination of the code enforcement officer made under this Article may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.

(2) If the applicant, upon appeal, requests a variance as authorized by RSA 674:33,I(b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:

a. that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.

b. that if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.

c. that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(3) The Zoning Board of Adjustment shall notify the applicant in writing that: (I) the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

(4) The community shall maintain a record of all variance actions, including their justification for their issuance, and report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

Article IX

Wetland Resources Conservation Overlay District

Purpose: Wetland protection and preservation are extremely important to the current and future health, safety and public welfare of the Town of Moultonborough. Therefore this article is incorporated into the Zoning Ordinance as a means to protect public and private water supplies, trap and reduce sediment and other pollutants, promote bank stabilization, protect riparian wetlands, minimize flooding, prevent decreases in base flow, protect wildlife habitat and generally protect, preserve and maintain water quality.

A. Overlay District Regulations: The special regulations of this overlay district are in addition to the regulations of the underlying zoning ordinance.

B. Wetlands Conservation Overlay District Boundaries: The Overlay District shall include rivers, lakes, ponds, perennial streams, vernal pools and all jurisdictional wetlands located within the Town of Moultonborough and the surrounding upland areas of each of these resources in the Town as specified in Section D of this Article.

C. Applicability: This Article shall apply to Wetlands that are greater than 20,000 square feet in their entirety and Wetlands of any size that are contiguous to a river, brook, lake or pond, except as exempted under Section IX E. below.

D. Setbacks from Wetlands: Setbacks shall be fifty (50) feet from Wetlands. A Naturally Vegetated

Buffer shall be maintained within the twenty-five (25) feet immediately adjacent to the applicable Wetlands.

E. Exemptions: Manmade ditches, swales, and storm-water management devices; manmade sedimentation/detention basins or ponds; manmade ponds such as agricultural ponds, fire ponds, wildlife ponds and the like are exempted from the provisions of this Article. Existing lots of record less than 5 acres created prior to January 3, 2008 or lots proposed for less than 5 acres for which an application has been filed with and noticed by the Planning Board prior to January 3, 2008 are exempted from the provisions of this Article. This exemption should not apply to lots being developed for commercial uses.

F. Permitted Uses: Within the 50 foot setback, Permitted uses are those that will not require the erection, installation or construction of any structure, building or Impermeable Surface; will not alter the natural surface configuration by addition of fill or by dredging; and are otherwise permitted by this Article. Such uses include, but are not limited to, the following:

1. Outdoor recreation uses consistent with the purpose and intent of this ordinance and parks established for such purposes;
2. Wildlife refuges and wildlife and fisheries management;
3. Conservation areas, open space areas, and nature trails if constructed with no impermeable materials.
4. Docks, breakwaters, moorings, beach maintenance and wells as permitted by the N.H. DES.
5. Construction of wells and water feed lines for water supply;
6. Agriculture and forestry in accordance with best practices, and removal of dead, diseased, unsafe or fallen trees;
7. Construction and maintenance of trails, paths and bridges for non-motorized recreation purposes or for tracked, motorized vehicles on snow;
8. Maintenance and repair of roads, driveways and any other structures approved for conditional use in accordance with this Article;
9. Construction or placement, of sheds or accessory structures which occupy a ground area of no greater than 150 square feet in size, providing they are not in the Naturally Vegated Buffer and the use of which are incidental and subordinate to the primary structure of the property and providing that they do not require the disturbance or improvement of the soil surface or construction of a sub-surface foundation.

G. Conditional Uses: The following uses may be permitted within the 50 foot setback as Conditional Uses by the Planning Board:

1. Construction, using the least impacting alternative, of roads, driveways, footpaths, bridges and utility crossings and easements necessary for productive use of land not classified as wetlands, consistent with area's zoning.
2. Outdoor recreational facilities that do not require the construction of buildings or installation of impermeable surfaces.
3. Trails and associated structures for use by year-round motorized or non-motorized vehicles.
4. Accessory Structures.
5. Water impoundments for the purpose of creating a water body for wildlife, fire safety, or recreational uses.
6. Other uses that the applicant proves to the satisfaction of the Planning Board will not interfere

with the wetlands functions and values, water quality or value as wildlife habitat, consistent with Purpose as stated herein.

7. Modification and relocation of a watercourse as approved by the NH DES.

8. Requirements for conditional use approval:

- a. No other area is feasible and reasonable for the proposed use.
- b. Soil disturbance will be minimum necessary for construction and operation.
- c. Detrimental impact will be minimized.
- d. Restoration activities will leave site as nearly as possible in its pre-disturbance condition.
- e. Will not disturb habitat for rare, threatened or endangered species as determined by the NH

Natural Heritage Bureau.

H. Prohibited Uses Within the 50 Foot Setback:

1. All Uses. Buildings, Structures and Impermeable Surfaces, except as may be provided in Section IX. F. Permitted Uses & G., Conditional Uses.
 2. Salt storage yards
 3. Automobile junk yards
 4. Solid or hazardous waste facilities
 5. Fertilizer except lime and/or wood ash
 6. Bulk storage of chemicals, petroleum products or hazardous materials and underground tanks
 7. Sand and gravel excavations as defined in RSA 155-E and processing of excavated materials
 8. Disposal of snow or ice collected from roadways or parking areas

I. Performance Standards relative to the Buffer/Setback:

1. Flagging of the 50 foot buffer/setback is required when construction is to take place within 50 feet of the Wetland - before and during any construction.
2. Applicable industry Best Management Practices shall be employed for pre & post construction, forestry, agriculture, and other permitted activity.

J. Effect on Lot Size/Density Calculation: The land area contained within the 50 foot wetlands setback shall not be counted as wetlands and may be considered in lot density calculations.

K. Enforcement: The Moultonborough Selectboard, itself or through its Agent, the Code Enforcement Officer, shall enforce this Article of the Zoning Ordinance and violations may be punishable by fines as provided by RSA 676:17.

L. Definitions:

Buffer: The protected upland areas adjacent to wetlands and surface waters in the Conservation Overlay District other than the wetlands themselves.

Certified Wetland Scientist: A person qualified to delineate wetland boundaries and prepare wetland maps and who is certified by the state of New Hampshire Board of Natural Scientists, as

defined by RSA 310-A:76, II-a.

Hydric Soils: Soils that are saturated or flooded during a sufficient portion of the growing season such that they develop anaerobic conditions in the upper soil layers.

Impermeable Surface: Driveways, parking areas, walkways, or other features introduced to a property that are constructed of materials, such as concrete, asphalt or stone, that prevent the passage of water through them to the soil below.

Naturally Vegetated: Uncut or undisturbed forest, minimally disturbed or managed forest, abandoned pasture or fields, or other land displaying vegetation that is not introduced as a consequence of development.

Setback: The minimum distance between the edge of a delineated wetland or high water mark of a body of water or stream, as the case may be, and any building and structures, septic systems or impermeable surfaces. The distance is to be measured horizontally in a direction perpendicular to the delineated wetland or high water mark of the body of water or stream.

Wetland: An area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support a prevalence of vegetation typically adapted for life in a saturated soil conditions. Wetlands generally include, but are not limited to, swamps, marshes, bogs, vernal pools and similar areas. For the purpose of determining buffer zones for site plan and subdivision review wetland boundaries shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetland, by a certified wetland scientist according to the Corps of Engineers Wetlands Delineation Manual, 1987, and the Field Indicators Guide for Identifying Hydric Soils in New England, 2004.

Article X

Small Wind Energy Systems Ordinance

A. Purpose:

This small wind energy systems ordinance is enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to accommodate small wind energy systems in appropriate locations, while protecting the public's health, safety and welfare. In addition, this ordinance provides a permitting process for small wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.

B. Definitions:

Meteorological tower (met tower): Includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry

devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

Modification: Any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Like-kind replacements shall not be construed to be a modification.

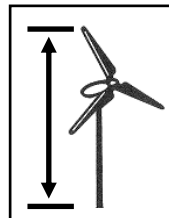
Net metering: The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.

Power grid: The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

Shadow flicker: The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

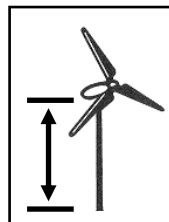
Small wind energy system: A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.

System height: The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.



Tower: The monopole, guyed monopole or lattice structure that supports a wind generator.

Tower height: The height above grade of the fixed portion of the tower, excluding the wind generator.



Wind generator: The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

C. Procedure for Review:

1. Building Permit: Small wind energy systems and met towers are an accessory use permitted in all zoning districts where structures of any sort are allowed, except for Commercial Zone C, the Village Zone, where they are not allowed. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the building inspector. A building permit shall be required for any physical modification to an existing small wind energy system. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.
2. Application: Applications submitted to the building inspector shall contain a site plan with the following information:
 - i) Property lines and physical dimensions of the applicant's property.
 - ii) Location, dimensions, and types of existing major structures on the property.
 - iii) Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.
 - iv) Tower foundation blueprints or drawings.
 - v) Tower blueprints or drawings.
 - vi) Setback requirements as outlined in this ordinance.
 - vii) The right-of-way of any public road that is contiguous with the property.
 - viii) Any overhead utility lines.
 - ix) Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.
 - x) Small wind energy systems that will be connected to the power grid shall include a copy of the approval for interconnection with their electric utility provider.
 - xi) Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
 - xii) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.
 - xiii) Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
 - xiv) List of abutters to the applicant's property.

3. **Abutter and Regional Notification:** In accordance with RSA 674:66, the building inspector shall notify all abutters and the local governing body by certified mail upon application for a building permit to construct a small wind energy system. The public will be afforded 30 days to submit comments to the building inspector prior to the issuance of the building permit. The building inspector shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the building inspector shall follow the procedures set forth in RSA 36:57, IV.

D. Standards:

1. The building inspector shall evaluate the application for compliance with the following standards;

- a. **Setbacks:** The setback shall be calculated by multiplying the minimum setback requirement number by the system height and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.

Minimum Setback Requirements			
Occupied Buildings on Participating Landowner Property	Occupied Buildings on Abutting Property	Property Lines of Abutting Property and Utility Lines	Public Roads
0	1.5	1.1	1.5

- i) Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.
- ii) Guy wires are prohibited.
- b. **Tower:** The maximum tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the small wind energy system. In no situation shall the tower height exceed 150 feet.
- c. **Sound Level:** The small wind energy system shall not exceed 60 decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.
- d. **Shadow Flicker:** Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.

- e. Signs: All signs including flags streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs.
- f. Code Compliance: The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.
- g. Aviation: The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424.
- h. Visual Impacts: It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.
 - i) The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.
 - ii) The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include but are not limited to white, off-white or gray.
 - iii) A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.
- i) Approved Wind Generators: The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.

- j) Utility Connection: If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.
- k) Access: The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
- l) Clearing: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

E. Abandonment:

1. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the building inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
2. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the building inspector. "Physically remove" shall include, but not be limited to:
 - a. Removal of the wind generator and tower and related above-grade structures.
 - b. Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
3. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the building inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. After review of the information provided by the owner, the building inspector shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the building inspector shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.
4. If the owner fails to respond to the Notice of Abandonment or if, after review by the building inspector, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy

system after the Notice of Abandonment procedure, the building inspector may pursue legal action to have the small wind energy system removed at the owner's expense.

F. Violation:

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the small wind energy system.

G. Penalties:

Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed by NH Revised Statutes Annotated Chapter 676:17.

ARTICLE XI

Administrative Provisions

A. Authority. The Zoning Board of Adjustment shall have the powers designated by RSA 673, RSA 674, and specifically RSA 674:33 as well as such other powers as lawfully assigned to it by the legislature and by ordinance or by vote of the town meeting.

(1) The Zoning Board of Adjustment shall hear and decide appeals if it is alleged there is error made by an administrative official of the town or by any other town board in any order, requirement, decision, or determination related to this ordinance.

(2) The Zoning Board of Adjustment may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.

B. Special Exception. The Zoning Board of Adjustment shall make special exceptions to the terms of the ordinance upon proper application therefore; and in the event that it shall determine, after public hearing, that the special exception will result in harmony with the general purpose and intent of the zoning ordinance of the Town of Moultonborough and that it shall be in accordance with the general and/or specific rules contained in this ordinance.

C. Limited Special Exceptions/Temporary Use. For all temporary uses not allowed by ix, I.(1 & 2), the board of adjustment, through a simplified application process, not requiring site plan approval from the Planning Board, may grant a limited special exception, after due notice and hearing, for the temporary occupancy and use of a structure or land, in any zone, for a purpose that does not conform with the zone requirements. Such occupancy

and use shall be subject to any reasonable conditions and safeguards which the board of adjustment may impose to minimize any injurious effect upon the neighborhood or to protect contiguous property. The approval by the board of adjustment and the limited special exception based thereon, for such temporary occupancy and use, shall not be granted for a period of more than twelve (12) months and may be renewed upon reapplication to the board of adjustment however, such occupancy and use shall be of a temporary nature, with no expectation of becoming permanent.

D. Variances. The Zoning Board of Adjustment may, upon appeal in specific cases, authorize a variance from the terms of the Zoning Ordinance, if the Board finds that all of the following facts exist:

- (1) Granting a Variance would cause no diminution in the value of surrounding property;
- (2) Granting a Variance would be of benefit to the public interest;
- (3) Denying a Variance would result in unnecessary hardship to the owner of the property;
- (4) Granting a Variance would do substantial justice;
- (5) Granting a Variance would not be contrary to the spirit of the Ordinance.

E. Procedures. The board of adjustments shall adopt rules governing its proceedings pursuant to the requirements of RSA 676:1.

F. Notice Of Decision. The Zoning Board of Adjustment shall issue a final written decision which either approves or disapproves an application. If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. The decision shall be placed on file in the board's office and shall be made available for public inspection within 72 hours after the decision is made.

G. Rehearings. Within 30 days after any decision or order of the Zoning Board of Adjustment is filed with the secretary or clerk of the Zoning Board of Adjustment, any party to the action or proceeding, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding or covered or included in the order in accord with RSA 677:2. A motion for rehearing shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the Zoning Board of Adjustment shall be taken unless the applicant shall have made application for rehearing as provided in RSA 677:2 and no ground not set forth in the application shall be urged, relied on, or given any consideration by a court except as provided in RSA 677:3. The board of adjustment shall, within 30 days after a motion for rehearing is filed, either grant or deny the motion or suspend the order or decision complained of pending further consideration.

H. Issuing Permits. The Board of Selectmen or their designated agent shall issue any and all building permits required. No permit shall be issued for the erection of any structure and the use of any land unless the proposal complies with the provisions of this ordinance. The Board of Selectmen shall determine the format for applications for building permits and the required fee from time to time. Building permits shall be posted in a prominent place on the lot to which the permit pertains.

(1) Temporary Use. Residential sales (tag, barn, yard, garage, etc.). The temporary use for the occasional sale of personal items, conducted at the residence of the homeowner to dispose of surplus items will not require a special exception or permit for change of use. "Occasional" shall be defined as no more frequently than 4 days, either separately or grouped, during any 60 day period.

(2) Temporary Use. Commercial use (tag, barn, garage, flea market, farmers market, etc.). Temporary uses, up to a maximum of three (3) consecutive days over a 30 day period, may be permitted upon application to and approval by the Board of Selectmen. Such occupancy and use shall be subject to any reasonable conditions and safeguards which the Board of Selectmen may impose to minimize any injurious effect upon the neighborhood or to protect contiguous property. Rather than acting upon an application, the selectmen may at any time direct the applicant to proceed through the board of adjustment rather than through the selectmen.

I. Enforcement. The Board of Selectmen or their agent is given the power and authority to enforce the provisions of this ordinance and to control the issuance of any building permits. Upon receiving information which the selectmen deem credible that this ordinance is being violated, and upon an affirmative vote of a majority of the Board of Selectmen, the selectmen are authorized to enforce the provisions of this ordinance asking appropriate relief in the superior court, or by taking any other legal action. The Board of Selectmen may appoint a building official whose duty it shall be to represent the board in administering and enforcing this ordinance. The appointment of a building official does not supersede the board's authority or obligation.

J. Penalties. Penalties for violation of the zoning ordinance shall be as set forth in RSA 676:17 and 676:19.

K. Severability. If any section, clause, provision, or portion of this zoning ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holdings shall not affect any other section, clause, provision, or portion of this ordinance which is not, in and of itself, determined to be invalid or unconstitutional.

L. This ordinance shall take effect upon its passage.

ARTICLE XII

Stormwater Management Ordinance

I. PURPOSE

To protect, maintain and enhance the public health, safety, environment, and general welfare by establishing minimum requirements to control the adverse affects of increased post-development stormwater runoff, decreased groundwater recharge, and non-point source pollution associated with new development and redevelopment.

II. AUTHORITY

The provisions of this Article are adopted pursuant to RSA 674:16, Grant of Power, RSA 674:17, Purposes of Zoning Ordinance, and RSA 674:21, Innovative Land Use Controls.

III. APPLICABILITY

The requirements of this article shall apply to all subdivisions platting new roads, commercial, and multi-family developments and redevelopments which disturb 20,000 square feet or more in all zoning district(s).

IV. DEFINITIONS

Development: For the purposes of this article, development refers to alterations to the landscape or structures that create, expand or change the location of impervious surfaces or alters the natural drainage of a site.

Disturbance: For purposes of this Article, disturbance shall mean any earth moving construction activity, including creation or modification of impervious surfaces, structures, landscaping, infrastructure, or any change of the existing grade from pre-development conditions.

Erosion: The detachment and movement of soil, rock, or rock fragments by water, wind, ice or gravity.

Impervious Surface: Any structure or land surface with a very low capacity for infiltration, including but not limited to asphalt pavement, cement, roofs, gravel and paved roadways, compacted soils, and other similar surfaces that do not easily infiltrate stormwater runoff. Pervious pavement is not considered an impervious surface.

Infiltration: The process by which water enters the soil profile (seeps into the soil).

Multi-Family Development: Development of more than two (2) dwelling units on a single lot.

Recharge: The amount of water from precipitation that infiltrates into the ground and is not evaporated or transpired.

Redevelopment: For purposes of this Article, Redevelopment shall mean any physical change to an existing site requiring Planning Board approval.

Sediment: Solid material, mineral or organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water or gravity as a product of erosion.

Site: The lot or lots on upon which development is to occur or has occurred.

Stormwater: Water resulting from precipitation (including rain and snow) that runs off the land's surface, is transmitted to the subsurface, or is captured by separate storm sewers or other drainage facilities.

Stormwater Runoff: Water flow on the surface of the ground or in storm sewers, resulting from precipitation.

Vegetation: Is defined to include trees, plants, shrubs, vines or other forms of plant growth.

V. STORMWATER MANAGEMENT PLAN

All subdivisions, commercial and multi-family developments and redevelopments which disturb 20,000 square feet or more shall submit a Stormwater Management Plan (SMP) with an application for subdivision or site plan review. The SMP, shall be prepared by a licensed New Hampshire, Professional Engineer, and shall address and comply with the requirements set forth herein and as specified by the Planning Board. The plan shall, at a minimum, include drainage and water quality reports indicating both pre-development, and proposed post-development, conditions, with a statement of comparison between pre-and post-development conditions. The plan shall be in conformance to the greatest extent possible with the design guidelines and principles set forth in the most recent edition of the NH Stormwater Manual.

VI. STORMWATER MANAGEMENT REQUIREMENTS

All development activity must comply with the following provisions to reduce and properly manage stormwater post-development:

- A. There shall be no negative impact to water quality post-development from pre-development conditions.
- B. Post-development peak runoff rate and volume shall not exceed pre-development levels for a 50-year storm event.
- C. Stormwater management designs shall demonstrate that annual average pre-development groundwater recharge volume (GRV) is maintained post-development, when compared to pre-development conditions.
- D. For the purposes of calculating pre-development conditions, any site that was wooded in the last five (5) years shall be treated as though the pre-development conditions are undisturbed woods.
- E. All stormwater management plans shall include an Operation and Maintenance (O&M) Plan for the system (prior to final approval of any permits) to ensure continued proper functioning of the system. Such O & M plan shall be recorded at the Registry of Deeds prior to issuance of any Certificates of Occupancy for the site(s). Guidance for the development of such a plan may be found in the New Hampshire Stormwater Manual.

VII. ENGINEERING REVIEW

- A. The applicant shall submit a fee, as determined by the Planning Board to cover the costs of outside engineering peer review of their proposed stormwater management plan(s), and other pertinent plans and documents, if deemed necessary by the Planning Board.

- B. Additional copies of all plans, engineering studies, and additional information as requested by the Planning Board shall be provided as necessary to allow for thorough outside engineering review.

VIII. EFFECTIVE DATE

This ordinance shall be effective as of June 30, 2010.

Article XIII

Groundwater Protection Ordinance

I. AUTHORITY

RSA 674:16, and RSA 674:21(I)(j) relative to innovative land use controls.

II. PURPOSE

The purpose of this ordinance is, in the interest of public health, safety, and general welfare, to preserve, maintain, and protect from contamination existing and potential groundwater supply areas and to protect surface waters that are fed by groundwater.

The purpose is to be accomplished by regulating land uses which could contribute pollutants to designated wells and/or aquifers identified as being needed for present and/or future public water supply.

III. DEFINITIONS

A. Aquifer: a geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.

B. Petroleum bulk plant or terminal: means that portion of the property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and are stored or blended in bulk for the purpose of distributing such liquids by tank vessel, pipeline tank car, tank vehicle, portable tank, or container.

C. Groundwater: subsurface water that occurs beneath the water table in soils and geologic formations.

D. Gasoline station: means that portion of a property where petroleum products including diesel fuel and other distillates are received by tank vessel, pipeline, tank car, or tank vehicle and distributed for the purposes of retail sale of gasoline and/or other petroleum products.

E. Impervious: not readily permitting the infiltration of water.

F. Impervious surface: a surface through which regulated substances cannot pass when spilled. Impervious surfaces include concrete, gravel or paved roads, driveways, parking lots, and rooftops.

Earthen, wooden; or other surfaces which could react with or dissolve when in contact with the substances stored on them are not considered impervious surfaces.

G. Junkyard: an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automotive recycling yard, and includes garbage dumps and sanitary landfills. The word does not include any motor vehicle dealers registered with the director of motor vehicles under RSA 261:104 and controlled under RSA 236:126.

H. Outdoor storage: storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.

I. Public water system: a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

J. Regulated substance: petroleum, petroleum products, and substances listed under 40 CFR 302, 7-1-05 edition, excluding the following substances: (1) ammonia, (2) sodium hypochlorite, (3) sodium hydroxide, (4) acetic acid, (5) sulfuric acid, (6) potassium hydroxide, (7) potassium permanganate, and (8) propane and other liquefied fuels which exist as gases at normal atmospheric temperature and pressure.

K. Sanitary protective radius: The area around a public water supply well which must be maintained in its natural state as required by Env-Ws 378 or 379 (for community water systems); Env-Ws 372.12 and Env-Ws 372.13 (for other public water systems).

L. Secondary containment: a structure such as a berm or dike with an impervious surface which is adequate to hold at least 110% of the volume of the largest regulated-substances container that will be stored there.

M. Snow dump: For the purposes of this ordinance, a location where snow, which is cleared from roadways and/or motor vehicle parking areas, is placed for disposal.

N. Stratified-drift aquifer: A geologic formation of predominantly well-sorted sediment deposited by or in bodies of glacial meltwater, including gravel, sand, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells.

O. Surface water: streams, lakes, ponds and tidal waters, including marshes, water-courses and other bodies of water, natural or artificial.

P. Wellhead protection area: The surface and subsurface area surrounding a water well or wellfield supplying a community public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.

Q. Temporary Storage of Construction Materials: Whichever comes first

- A. No more than One Month past the date of completion of construction, or
- B. Six months from initial storage of materials

IV. GROUNDWATER PROTECTION DISTRICT

The Groundwater Protection District is an overlay district which is superimposed over the existing underlying zoning and includes within its boundaries, both

(1) all of the Wellhead Protection Areas for public water supply wells as defined under Article III, part (I) of this ordinance. The district is shown on the map entitled, Water Resources, Natural Resource Inventory, Moultonborough NH, dated February 10, 2007, and

(2) the Stratified Drift Aquifer(s) shown on the map entitled, Water Resources, Natural Resource Inventory, Moultonborough NH, dated February 10, 2007.

During Planning Board review, when the actual boundaries of this Overlay District are disputed by any owner, abutter or the Planning Board, the Board may, at the applicant's expense, require the services of a professional hydrologist, specialist, engineer, or other certified professional, to determine the site-specific boundaries of the district as relating to the subject site. Based upon site-specific, documented, scientific and technical information submitted by the qualified professional(s), the Planning Board shall have authority to make the final determination as to the location of disputed boundaries for the site before the Board.

V. APPLICABILITY

This Ordinance applies to all uses in the Groundwater Protection District, except for those uses exempt under Article XII (Exemptions) of this Ordinance.

VI. PERFORMANCE STANDARDS

The following Performance Standards apply to all uses in the Groundwater Protection District unless exempt under Article XII:

- A. For any commercial use that will render impervious more than 15% or more than 2,500 square feet of any lot, whichever is greater, a stormwater management plan shall be prepared by a licensed N.H. Engineer.
- B. Conditional uses, as defined under Article X shall develop stormwater management and pollution prevention plans. The plans shall demonstrate that the use will:
 - 1. Minimize, through a source control plan that identifies pollution prevention measures, the release of regulated substances into stormwater;
 - 2. Demonstrate that recharge to groundwater will not result in violation of Ambient Groundwater Quality Standards (Env-Or 603.03) at the property boundary;

3. Stipulate that expansion or redevelopment activities shall require an amended stormwater plan and may not infiltrate stormwater through areas containing contaminated soils without completing a Phase I Assessment in conformance with ASTM E 1527-05, also referred to as All Appropriate Inquiry (AAI).
- C. Animal manures, fertilizers, and compost must be stored in accordance with Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets, and Food, August 2005, and any subsequent revisions;
- D. All regulated substances must be stored in product-tight containers on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and outside drains;
- E. Facilities where regulated substances are stored must be secured by means of a door and/or gate that is locked when authorized personnel are not present.
- F. Outdoor storage areas for regulated substances, associated material or waste must be protected from exposure to precipitation and must be located at least 50 feet from surface water or storm drains, at least 75 feet from private wells, and outside the sanitary protective radius of wells used by public water systems. Storage of such substances in sealed drums or barrels shall not constitute compliance with this Article unless said drums or barrels are also stored within an enclosed structure
- G. Secondary containment must be provided for outdoor storage of regulated substances if an aggregate of 275 gallons or more of regulated substances are stored outdoors on any particular property;
- H. Containers in which regulated substances are stored must be clearly and visibly labeled and must be kept closed and sealed when material is not being transferred from one container to another;
- I. Prior to any land disturbing activities, all inactive wells on the property, not in use or properly maintained at the time the plan is submitted, shall be considered abandoned and must be sealed in accordance with We 604 of the New Hampshire Water Well Board Rules.
- J. All sanitary sewer systems must be designed to minimize or eliminate leakage or discharges from the system into the groundwater.
- K. On site waste disposal systems shall be located so as to avoid or minimize groundwater contamination.
- L. Where the subject site is partially in the Overlay District, all potential pollution sources, including on site waste disposal systems, shall be located outside the Overlay District, to the maximum extent feasible.

VII. SPILL PREVENTION, CONTROL AND COUNTERMEASURE (SPCC) PLAN

Conditional uses, as described under Article X, part (A), using regulated substances shall submit a spill control and countermeasure (SPCC) plan to the Fire Chief who shall determine whether the plan will prevent, contain, and minimize releases from ordinary or catastrophic events such as spills, floods or fires that may cause large releases of regulated substances. It shall include:

- 1) A description of the physical layout and a facility diagram, including all surrounding surface waters and wellhead protection areas.
- 2) Contact list and phone numbers for the facility response coordinator, cleanup contractors, and all appropriate federal, state, and local agencies who must be contacted in case of a release to the environment.
- 3) A list of all regulated substances in use and locations of use and storage;
- 4) A prediction of the direction, rate of flow, and total quantity of regulated substance that could be released where experience indicates a potential for equipment failure.
- 5) A description of containment and/or diversionary structures or equipment to prevent regulated substances from infiltrating into the ground.

VIII. PERMITTED USES

All uses permitted by right or allowed by special exception in the underlying district are permitted in the Groundwater Protection District unless they are Prohibited Uses or Conditional Uses. All permitted uses must comply with the Performance Standards unless specifically exempt under Article XII.

IX. PROHIBITED USES

The following uses are prohibited in the Groundwater Protection District.

- A. The development or operation of a hazardous waste disposal facility as defined under RSA 147-A;
- B. The development or operation of a solid waste landfill;
- C. The outdoor storage of road salt or other deicing chemicals in bulk, or the indoor storage where there is no impervious containment;
- D. The development or operation of a junkyard;
- E. The development or operation of a snow dump;
- F. The development or operation of a wastewater or septage lagoon;
- G. The development or operation of a petroleum bulk plant or terminal;

H. The development or operation of gasoline stations.

I. Excavation, as defined in RSA 155:E, or mining within four (4) feet of Seasonal High Water Table. This prohibition applies to future excavation of existing site as well as future excavation sites.

J. Any other use or activity that:

- a. Will have a detrimental effect on the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants, or;
- b. Will cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer, or;
- c. Will discharge wastewater on the site other than that which is permitted under the provisions of this Ordinance.

X. CONDITIONAL USES

The Planning Board may grant a Conditional Use Permit for a use which is otherwise permitted within the underlying district, if the permitted use is involved in one or more of the following:

- A. Storage, handling, and use of regulated substances in quantities exceeding 100 gallons or 800 pounds dry weight at any one time, provided that an adequate spill prevention, control and countermeasure (SPCC) plan, in accordance with Article VII, is approved by the local Fire Department;
- B. Any commercial use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater.

In granting such approval the Planning Board must first determine that the proposed use is not a prohibited use and will be in compliance with the Performance Standards in Article VI

The Planning Board may, at its discretion, require a performance guarantee or bond, in an amount and with surety conditions satisfactory to the Board, to be posted to ensure completion of construction of any facilities required for compliance with the Performance Standards.

The Planning Board may impose such reasonable restrictions or conditions on the Conditional Use Permit on matters it deems advisable in order to protect the health, safety and groundwater quality of the residents of Moultonborough.

A Conditional Use Permit may be withdrawn by the Planning Board if the use is not conducted in accordance with the terms of this Ordinance and any restrictions or conditions of the Conditional Use Permit.

XI. EXISTING NONCONFORMING USES

Existing nonconforming uses may continue unless such use is determined to be an imminent hazard to the public health and safety by the Code Enforcement Officer or Health Officer. All pre-existing nonconforming uses must be in compliance with all applicable state and federal requirements, including Env-Ws 421, Best Management Practices Rules.

XII. EXEMPTIONS

Nothing in this Article shall be deemed to prohibit the storage and handling of products in quantities for normal household use. The following uses are exempt from the specified provisions of this ordinance:

- A. Storage of heating fuels, which are also regulated substances, for on-site use or fuels for emergency electric generation, provided that storage tanks are indoors on a concrete floor or have corrosion control, leak detection, and secondary containment in place.
- B. Storage of motor fuel in tanks attached to vehicles and fitted with permanent fuel lines to enable the fuel to be used by that vehicle.
- C. The sale, transportation, and use of pesticides as defined in RSA 430:29 XXVI are exempt from all provisions of this ordinance;

XIII. RELATIONSHIP BETWEEN STATE AND LOCAL REQUIREMENTS

Where both the State and the municipality have existing requirements, or where the provisions of this Article are in conflict with any other ordinance, statute or law, the more stringent standard shall govern.

XIV. MAINTENANCE AND INSPECTION

- A. For uses requiring Planning Board approval under this Article, a narrative description of all maintenance requirements for structures required to comply with the Performance Standards of this Article, as applicable, shall be referenced in the deed for the site and shall be recorded, so as to run with the land on which such structures are located, at the Registry of Deeds for Carroll County. The description so prepared shall comply with the requirements of RSA 478:4-a, and shall include recommended maintenance cycles to ensure proper operation of these structures.
- B. Inspections may be required to verify compliance with Performance Standards. Such inspections shall be performed by the Code Enforcement Officer at reasonable times with prior notice to the landowner.
- C. Underground storage tank systems and aboveground storage tank systems that are in compliance with applicable state rules are exempt from inspections under this ordinance.

XV. ENFORCEMENT PROCEDURES AND PENALTIES

The Planning Board and/or Code Enforcement officer shall enforce the provisions of this Ordinance and to ensure that requirements and restrictions or conditions are complied with. Any violation of the requirements of this ordinance shall be subject to the enforcement procedures and penalties detailed in RSA 676.

XVI. SAVING CLAUSE

If any provision of this ordinance is found to be unenforceable, such provision shall be considered separable and shall not be construed to invalidate the remainder of the ordinance.

XVII. EFFECTIVE DATE

This ordinance shall be effective as of June 30, 2010.